IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.999 OF 2006

In

SUIT NO.873 OF 2006

Aglowmed Ltd. : Plaintiff

V/s.

M/s.Neomed Healthcare & Ors. : Defendants

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Mr.Mahesh A. Mahadgut for the plaintiff.

None present for the defendants.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 7, 2007.

P.C.

1. By this Notice of Motion, the plaintiff seeks an injunction, inter alia, restraining the defendants from infringing their copyright in the package of their product "Aglozyme". The product is a medicinal product meant to be used for digestion. The defendants' product is meant for the same purpose under the name "Opzyme". The plaintiff's registration is at exh.'B'. It shows that this is being used by the plaintiff from the year 1986. The copyright is in respect of the artistic work on the packaging. The plaintiff's carton has three successive

bands which become lighter in colour from the bottom of the carton. The rest of it is in yellow colour. The defendants' carton has the same colour scheme, though the shades of the colours are not identical. The only other difference is that the defendants' carton has the figure of a pineapple on the carton. However, the slight difference in the shades of the colour does not take away the deceptive similarity between the two and if the products are placed on the shelf, it would be easy to confuse between them from the usual distance from which a decision to purchase is made. This Court granted an ad-interim injunction on 31.3.2006. The learned counsel for the plaintiff pointed out that the defendant no.2 was an employee of the plaintiff as stated in para 13 of the plaint. This information is significant while considering the defendants' intention to copy the mark.

2. In view of the above, I consider it appropriate in the interest of justice to allow the Notice of Motion. Hence, the Notice of Motion is allowed in terms of prayer clauses (a), (b) and (c). Order accordingly.

S.A. BOBDE, J.